BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

FLORENCIO GONZALEZ	)	
Claimant	)	
VS.	)	
	)	Docket No. 258,937
WICHITA IRON & METALS CORPORATION	)	
Respondent	)	
AND	)	
	)	
RELIANCE INSURANCE COMPANY and	)	
CNA INSURANCE COMPANIES	)	
Insurance Carriers	)	

ORDER

Respondent and both of its insurance carriers requested Appeals Board review of Administrative Law Judge John D. Clark's November 7, 2000, preliminary hearing Order.

ISSUES

After the November 7, 2000, preliminary hearing, the Administrative Law Judge entered a preliminary hearing Order on the same date that granted claimant's preliminary hearing benefit requests. Respondent was ordered to pay an outstanding medical expense from NovaCare as an authorized medical expense, medical expenses of Pedro A. Murati, M.D., and Fred Dopps, D.C., were ordered paid as unauthorized medical expenses and orthopedic surgeon John Estivo, D.O., was authorized as claimant's treating physician.

Respondent and its insurance carrier, CNA Insurance Companies (CNA), appeal and contend that the Administrative Law Judge exceeded his jurisdiction in awarding unauthorized medical expenses in excess of the statutory limit as set forth in K.S.A. 2000 Supp. 44-510h(b)(2).

Respondent and its insurance carrier, Reliance Insurance Company (Reliance), also appealed and request the Appeals Board to clarify which insurance carrier is liable for the medical treatment expenses owed NovaCare. Additionally, respondent and Reliance ask the Appeals Board to clarify which insurance carrier is responsible for payment of future medical expenses owed for the treatment of claimant's injuries by the authorized treating physician, Dr. Estivo.

In contrast, claimant contends the Appeals Board lacks jurisdiction to review these preliminary hearing issues and the appeals should be dismissed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the arguments contained in the parties' briefs, the Appeals Board finds it lacks jurisdiction to review the preliminary hearing issues raised on appeal.

The Administrative Law Judge, in a discussion with the parties' attorneys before claimant testified at the November 7, 2000, preliminary hearing, clarified the issues and the various positions of the parties. First, claimant is seeking preliminary hearing benefits for injuries he allegedly suffered in two separate accidents while employed by the respondent.

The first accident occurred on September 3, 1998, when claimant fell in a company truck and injured his hip and fractured his left elbow. Respondent provided treatment for those injuries, and claimant was released to return to work without permanent restrictions in December 1998.

Next, the claimant injured his low back on May 26, 2000, when he was moving a barrel and immediately noticed low-back pain. Respondent first provided medical treatment for claimant's low-back injury through a minor emergency center. Claimant was then referred for evaluation and treatment recommendations to orthopedic surgeon Robert L. Eyster, M.D. Dr. Eyster saw claimant on June 13, 2000. Claimant was found with pain in the lower back and occasional referred pain into the left S1 joint. Dr. Eyster continued claimant on medication and noted he was referring claimant to physical therapy for McKenzie extension exercises. Claimant remained working for the respondent with the restrictions of a 40-pound single lift, 20-pound repetitive lift and no forward excessive bending or twisting. On November 7, 2000, the date of the preliminary hearing, claimant remained under Dr. Eyster's care and treatment. But claimant testified and Dr. Eyster's medical notes indicate that claimant was not placed in a physical therapy program.

Claimant testified, because Dr. Eyster did not refer him to physical therapy, he went on his own to Fred Dopps, D.C. The first treatment claimant received from Dr. Dopps was on June 21, 2000. Claimant received regular weekly treatments from Dr. Dopps through August 7, 2000. At that time, claimant testified he had a discussion with Dr. Eyster that he felt he was not making any improvement as a result of the chiropractic treatments. Claimant then discontinued the chiropractic treatments on Dr. Eyster's recommendation.

One of claimant's preliminary hearing requests was a change in the authorized treating physician. Claimant testified he was not satisfied with Dr. Eyster's treatment because claimant was told by Dr. Eyster that he would have to continue to live with his pain

and discomfort. Claimant indicated he wanted to get better and not just continue to live with a continuing low-back problem.

During the Administrative Law Judge and the parties' discussion of the issues, the attorney representing Reliance and the attorney representing the claimant agreed that Reliance was responsible for the payment of medical services provided by NovaCare for medical treatment claimant received for claimant's September 3, 1998, work accident. Reliance had already paid for the majority of the treatment expenses, but a $425 balance remained. Claimant's only request of the Administrative Law Judge was that the preliminary hearing Order specifically order respondent and Reliance to pay the medical expenses owed NovaCare pursuant to the medical fee schedule.[1]

The parties stipulated that, for the September 3, 1998, accident, Reliance had coverage and, for the May 26, 2000, accident, CNA had coverage. In regard to the May 26, 2000, accident, the Administrative Law Judge asked the two insurance companies whether either of the companies would admit claimant met with a low-back injury on the dates in question. Reliance's attorney indicated that Reliance had provided medical treatment for the September 3, 1998, accident, and CNA's attorney then replied "[w]e'll admit compensability for the purposes of today's hearing, Your Honor."

The Appeals Board finds from the review of the discussions between the Administrative Law Judge and respondent's insurance carriers' attorneys at the November 7, 2000, preliminary hearing, that compensability of both accidents was admitted. Claimant injured his left elbow and hip in a September 3, 1998, accident. Thereafter, on May 26, 2000, he injured his low back while working for the respondent. Reliance had coverage for the September 3, 1998, accident, and CNA had coverage for the May 26, 2000, accident. Therefore, the Appeals Board finds the only issues raised on appeal for Appeals Board review are issues dealing with the furnishing of medical treatment. Reliance requests clarification of the Administrative Law Judge's preliminary hearing Order in regard to the responsibility for the payment of the NovaCare medical statement and for the future medical care as authorized through treating physician, Dr. Estivo. CNA interprets the Administrative Law Judge's preliminary hearing Order as ordering respondent and CNA to pay both Dr. Murati's medical statement of $375 and Dr. Dopps' medical statement of $1,098.12 in full as unauthorized medical expenses which would exceed the statutory limit of $500.

The preliminary hearing statute found at K.S.A. 2000 Supp. 44-534a gives the administrative law judge authority to grant or deny medical treatment pending the conclusion of a full hearing on the claim. As found above, compensability was not an issue

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[1] *See* K.S.A. 2000 Supp. 44-510i.

concerning either of these alleged accidents and, therefore, none of the specific jurisdictional issues listed in K.S.A. 2000 Supp. 44-534a were in dispute. Also, since the issues involve the furnishing of medical treatment, the Administrative Law Judge did not otherwise exceed his jurisdiction. At this juncture of the proceedings, the Appeals Board finds it does not have jurisdiction to review the issues appealed as those issues relate to the furnishing of medical treatment.

But, in an effort to avoid unnecessary litigation, the Appeals Board finds there is persuasive evidence the Administrative Law Judge intended the balance owed NovaCare to be the responsibility of Reliance for the September 3, 1998, accident and the other remaining orders contained in the preliminary hearing to be the responsibility of CNA for the May 26, 2000, accident. Additionally, the Appeals Board notes the $500 unauthorized medical expense limitation contained in K.S.A. 2000 Supp. 44-510h(b)(2) applies to each work-related accident and not to each unauthorized individual medical expense.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the respondent and its insurance carriers' appeal in this matter should be, and the same is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of January 2001.

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS
Jeff S. Bloskey, Overland Park, KS
D. Steven Marsh, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director